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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

_____ Term

79-5521

MICHELLE I. THOMPSON

Appellant

VS.

MICHAEL THOMPSON

Appellee

ON APPEAL FROM THE COURT OF APPEALS

OF MARYLAND

JURISDICTIONAL STATEMENT

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October 16, 1979

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JURISDICTIONAL STATEMENT

Michelle I. Thompson, the Appellant, appeals from the final judgment of the Court of Appeals of Maryland dated July 20, 1979 (Mandate August 20, 1979) holding that Maryland's paternity statute, Article 16, sec. 66(e), as applied in this case, is not violative of the Appellant's right to equal protection under the law as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

OPINIONS BELOW

The opinion of the Circuit Court for Anne Arundel County, Maryland dated October 15, 1977 is not reported. It is reprinted in the appendix hereto, appendix D, infra, pp. 5a.

The opinion of the Court of Special Appeals of Maryland, which appears in the appendix hereto, appendix E, pages 6a-19a is reported at 40 Md. app. 256, 390 A.2nd 1139.

The opinion of the Court of Appeals of Maryland, which appears in the appendix hereto, appendix F, infra, pp. 20a -31a is reported at _____ Md. app._____

JURISDICTION

The judgment of the Court of Appeals of Maryland, disallowing the appellant's paternity action in Anne Arundel County, Maryland was entered on July 20, 1979. (Appendix B, infra, pp.2a-3a) A notice of appeal was filed with the Court of Appeals of Maryland on October 15, 1979. (Appendix A, infra, pp.1)

This appeal is being docketed in this court within ninety days from the Court of Appeals of Maryland final judgment dated July 20, 1979. The jurisdiction of this court is invoked under 28 U.S.C. Sec. 1257 (2).

QUESTION PRESENTED

Whether the two year limitation period contained within Article 16 Sec. 66(e) of the Annotated Code of Maryland is violative of the equal protection clause of the Fourteenth Amendment of the Constitution when applied to bar illegitimate children from filing paternity actions beyond two years of birth.

CONSTITUTIONAL PROVISIONS AND RULES

Fourteenth Amendment, United States Constitution:"No State shall . . . nor deny to any person within its jurisdiction the equal protection of the laws."

Article 16, Sec. 66(e) of the Annotated Code of Maryland:

"Proceedings to establish paternity under the subtitle "Paternity Proceedings" and to charge the putative father of an illegitimate child or children with their support and maintenance shall be commenced during the pregnancy of the mother thereof or within two (2) years after the birth of such child or children; except that if the putative father of such child or children has acknowledged in writing the paternity of the child or children or has made payment or otherwise provided for the support and maintenance of the child or children, it is sufficient if the proceedings are commenced within two (2) years of the date of such acknow -

ledgement or the last such payment or provisions; provided, that the institution of proceedings under the former Article 12 of this Code, titled "Bastardy and Fornication", prior to June 1, 1963, shall suspend the further running period of limitation provided for herein.

RAISING THE FEDERAL QUESTION

At the trial court level, the appellant by way of Memorandum and oral argument, challenged the constitutionality of Maryland's paternity statute Article 16, Sec. 66(e). That court considered the appellant's position but rejected it. (Appendix D, infra, pp. 5a).

The equal protection argument was reiterated before the Court of Special Appeals by way of appeal. The court stated "Since we conclude that the limitation provision Sec. 66(e) promotes a legitimate state interest and, at the same time, does not invade any fundamental personal rights of appellant, in a constitutional sense, we have no hesitancy in concluding that appellant was not denied equal protection by the statutory requirement that paternity and support actions must be commenced within two years of birth". (Appendix E, infra, pp. 16a)

The appellant was granted a Writ of Certiorari by the Court of Appeals of Maryland. There the appellant argued that in light of Trimble v. Gordon and Lalli v. Lalli, the illegitimate child was entitled to a favored status when considering the constitutionality of a statute that discriminated against illegitimate children. The Court of Appeals responded with the following language, "The minor child suggested repeatedly in argument to us that illegitimate children are entitled to a favored status. We find no support for such a contention in any of the decisions of the Supreme Court". (Appendix F, infra, pp. 25a-26a). Thus the protection contention was considered and denied.

STATEMENT OF THE CASE

The appellant, Michelle I. Thompson, was born on May 10, 1969 to Veronica Mason. Ms. Mason had commenced sexual relations with the appellee, Michael Thompson, in the summer of 1968 and continued such relations through December of 1968. She became pregnant with Michelle in August of 1968. No action was taken by the appellant's mother or any other party during the first two years of the appellant's life to establish paternity. The reasons for this inaction have never been satisfactorily explored. On December 1, 1971 when the appellant was two and one half years of age Ms. Mason filed a paternity petition against the appellee in the Circuit Court for Anne Arundel County. Since the appellee never supported the appellant or admitted in writing that he was the father of the appellant, the Statute of Limitations period could not be tolled and the two year limitation period was asserted successfully as a defense. After the case was put at issue counsel was appointed to represent the appellant on October 11, 1977; approximately six months after the limitation period had run. Counsel for the appellant challenged the constitutionality of the two year limitation period as applied to the appellant at every level of Maryland trial and appellant court system.

THE QUESTION IS SUBSTANTIAL

The question of whether a state may impose a paternity statute of limitations period upon illegitimate children and thereby not violate the equal protection clause of the Fourteenth Amendment has never been directly addressed by this Court. It is a substantial question because forty-six states, including Maryland, throughout the United States currently have limitation periods of five years or less for filing paternity actions. In all of these states illegitimate children must have paternity petitions filed on their behalf within the limitation period or

forever lose the cluster of rights that flow from a paternity determination. This situation prevails even though, quite obviously a child of five years age or less cannot act to protect his or her rights. The child, if fortunate, will have a parent or a social worker or a state agency file the petition and thereby defeat the limitation period. But if the parent or social worker does not act, for whatever reason, the right to determine paternity and thereby acquire all of the rights that flow from such a determination are irretrievably lost.

The legitimate child, on the other hand, faces no such time stricture. In Maryland legitimate children may act any any time during minority to enforce child support rights, social security rights and other privileges. It is this disparity of treatment that makes the Maryland paternity statute constitutionally flawed. It was this argument that the appellant brought to the Court of Appeals of Maryland. Bolstered with the equal protection dictates enunciated in Trimble v. Gordon 430 U.S. 762 and Lalli v. Lalli _____U.S. _____ that have vindicated the rights of the illegitimate child, the appellant contended that it was a violation of equal protection of the law to impose the two year limitation period upon her.

The Court of Appeals of Maryland disagreed. Not only did that court find that there was no equal protection violation in the paternity statute but it went further to deny that any favored status has ever been given to the illegitimate children in any of the Supreme Court cases that have considered the illegitimate child in relation to the equal protection clause of the United States Constitution.

In Lalli v. Lalli this court specifically refrained from considering the constitutionality of a limitation period.

"As the New York Court of Appeals has not passed upon the constitutionality of the two-year limitation, that question is not before us. Our decision today therefore sustains Sec.4-1.2 under the Equal Protection Clause only with respect to its requirement that a judicial order of filiation be issued during the lifetime of the father of an illegitimate child." P_____

This important issue is now in focus. Any answer to the question must fall in favor of the illegitimate child; particularly since the State of Maryland cannot advance any substantial reason for the limitation period.

CONCLUSION

For these reasons this court should note probably jurisdiction of this appeal.

Respectfully submitted,

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